

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Tsui	Team: Squad #15	CCRB Case #: 202208148	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 11/24/2022 10:57 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 5/24/2024	Precinct: 120		
Date/Time CV Reported Mon, 11/28/2022 4:53 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 11/28/2022 4:53 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Candice Negron	02206	946639	1ST D C
2. SGT Eric Johnson	07704	956777	122 PCT
3. PO John Stillman	19079	968149	120 PCT
4. PO Mario Avenoso	16221	957343	120 PCT
5. PO Hasan Javaid	10388	965218	120 PCT
6. PO Gregory Carosella	21200	968996	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT Candice Negron	Abuse: Sergeant Candice Negron entered § 87(2)(b) on Staten Island.	§ 87(2)(b)
B . SGT Eric Johnson	Force: Police Officer Eric Johnson used physical force against § 87(2)(b)	§ 87(2)(b)
C . PO Mario Avenoso	Force: Police Officer Mario Avenoso used physical force against § 87(2)(b)	§ 87(2)(b)
D . PO Hasan Javaid	Force: Police Officer Hasan Javaid used physical force against § 87(2)(b)	§ 87(2)(b)
E . PO John Stillman	Force: Police Officer John Stillman used physical force against § 87(2)(b)	§ 87(2)(b)
F . PO Gregory Carosella	Force: Police Officer Gregory Carosella used physical force against § 87(2)(b)	§ 87(2)(b)
G . SGT Eric Johnson	Force: Police Officer Eric Johnson used a non-lethal restraining device on § 87(2)(b)	§ 87(2)(b)
H . PO Mario Avenoso	Force: Police Officer Mario Avenoso used a chokehold against § 87(2)(b)	§ 87(2)(b)
I . PO Mario Avenoso	Force: Police Officer Mario Avenoso restricted § 87(2)(b) breathing.	§ 87(2)(b)

## Case Summary

On November 28, 2022, § 87(2)(b) filed this complaint with the CCRB over the phone on the behalf of her husband, § 87(2)(b).

Prior to this incident, § 87(2)(b) who lives in the § 87(2)(b) apartment at § 87(2)(b) in Staten Island, took out an order of protection against § 87(2)(b) § 87(2)(b) on the § 87(2)(b). On November 24, 2022, at approximately 10:57 AM, Sergeant Candice Negron, Police Officer Eric Johnson, Police Officer Mario Avenoso, and other officers of the 120<sup>th</sup> Precinct responded to § 87(2)(b) on Staten Island to conduct a wellness check on § 87(2)(b) in response to a call made by her to the command. § 87(2)(b) allegedly told officers that she was upset and wanted to harm herself. When SGT Negron and the other officers arrived, § 87(2)(b) told them that § 87(2)(b) allegedly turned off her heat and water the night prior and had been drilling on the ceiling and playing music loud all morning. SGT Negron and the officers knocked on § 87(2)(b) apartment door and he answered. SGT Negron and PO Johnson informed § 87(2)(b) that he had violated § 87(2)(b) order of protection and that he would be arrested. SGT Negron grabbed § 87(2)(b) arm. He walked further inside his living room. SGT Negron and the other officers followed § 87(2)(b) through the front door and into his living room (**Allegation A: Abuse of Authority**, § 87(2)(g)). Officers grabbed § 87(2)(b) arms and attempted to place § 87(2)(b) in handcuffs but were unsuccessful (**Allegation B-F: Force**, § 87(2)(g)). PO Johnson deployed his Taser on § 87(2)(b) back (**Allegation G: Force**, § 87(2)(g)). An officer allegedly pulled § 87(2)(b) hood over his head, restricting his breathing. PO Avenoso grabbed § 87(2)(b) on the back of the neck and pushed it downwards (**Allegation H: Force**, § 87(2)(g)) (**Allegation I: Force**, § 87(2)(g)). The officers applied handcuffs on § 87(2)(b) and he was transported to § 87(2)(b) Hospital.

According to § 87(2)(b) arrest report, # § 87(2)(b) (BR17), he was arrested for the violation of order of protection, resisting arrest, obstruction of governmental administration, and harassment.

The investigation received BWC video footage for this incident. It is attached to IA #34 (BR18).

## Findings and Recommendations

### **Allegation (A) Abuse of Authority: Sergeant Candice Negron entered § 87(2)(b) 2nd Floor on Staten Island.**

§ 87(2)(b) stated (BR 1 and BR2) that at the time of the incident, he listened to music loudly alone inside his § 87(2)(b) apartment. The building is a multi-family house and § 87(2)(b) resided in the § 87(2)(b) apartment. § 87(2)(b) had one neighbor, § 87(2)(b) who resided on the § 87(2)(b) § 87(2)(b) and § 87(2)(b) have a history of disputes with each other. At the time of the incident, both of them had active orders of protections against each other. On the incident date, § 87(2)(b) heard a knock on his front door and opened it. § 87(2)(b) observed SGT Negron, PO Johnson, and other officers and § 87(2)(b) at his door. SGT Negron, and PO Johnson walked § 87(2)(b) down the stairs into an ambulance and then came back up to § 87(2)(b). SGT Negron, and PO Johnson told § 87(2)(b) that his loud music could be a violation of § 87(2)(b) order of protection against him. § 87(2)(b) closed the front door and returned to his apartment. Approximately fifteen minutes later, SGT Negron knocked on § 87(2)(b) front door again. § 87(2)(b) opened it and observed SGT Negron and PO Johnson with another officer standing behind them. SGT Negron placed her foot between the doorframe and

then she, PO Johnson, and all of the other officers entered § 87(2)(b) apartment through the door and into his living room. The officers did not ask § 87(2)(b) for permission to enter his apartment, nor told him that he had the right to refuse their entry. § 87(2)(b) told the officers that they were not allowed inside his apartment. The officers did not respond.

§ 87(2)(b) stated (BR6) that she called the police and informed them that § 87(2)(b) had violated her order of protection against him by playing loud music and drilling on her floor, as well as turning off her heat and water the night prior. SGT Negron, PO Johnson, and other officers arrived at § 87(2)(b) apartment, and she showed SGT Negron her order of protection against § 87(2)(b). § 87(2)(b) stated that she was upset by the circumstances and began to cry. PO Johnson asked § 87(2)(b) if she needed any mental health services and § 87(2)(b) replied yes. SGT Negron called an ambulance for § 87(2)(b) and she was transported to the hospital. § 87(2)(b) did not have any complaints against SGT Negron, PO Johnson, nor any of the other officers. During § 87(2)(b) CCRB interview, she stated that she did not recall all the terms on her order of protection against § 87(2)(b).

SGT Negron stated (BR4) that she was familiar with the location, and the prior disputes between § 87(2)(b) and § 87(2)(b). SGT Negron described their relationship as “tumultuous” and stated that she knew that § 87(2)(b) and § 87(2)(b) had active orders of protection against each other. On the day of the incident, SGT Negron stated that she was directed by LT Stefopoulos to go to location and to perform a wellness check on § 87(2)(b) after she had called the 120<sup>th</sup> Precinct stationhouse desk. § 87(2)(b) stated to the officer on the line that she wanted to harm herself. When SGT Negron and other officers arrived at the location, § 87(2)(b) told SGT Negron that she felt hopeless, and that she was going through “issues” with her son. § 87(2)(b) told SGT Negron that she could not sleep because § 87(2)(b) had turned off her apartment’s heat and drilled on his ceiling and her floor the night prior. § 87(2)(b) showed SGT Negron § 87(2)(b) drilling and the lack of gas inside her apartment. SGT Negron did not recall whether she heard any loud music, banging, or drilling at the time during the conversation. SGT Negron did not recall the specific terms on § 87(2)(b) order of protection against § 87(2)(b) but stated that he could not turn off § 87(2)(b) utilities, as per the order. After speaking with § 87(2)(b), SGT Negron, PO Johnson, and the other officers knocked on § 87(2)(b) apartment door. § 87(2)(b) opened it and remained behind the door. SGT Negron told him that he violated § 87(2)(b) order of protection against him by cutting off her utilities. SGT Negron told § 87(2)(b) he will be placed under arrest. SGT Negron instructed § 87(2)(b) to turn around at the front door. § 87(2)(b) repeatedly told her no, flailed his arms and then stepped back inside his apartment into the living room. SGT Negron followed § 87(2)(b) inside through the open door. PO Johnson and the other officers then followed SGT Negron inside. During SGT Negron’s CCRB statement, she stated that she and the other officers have the authority to enter § 87(2)(b) apartment because while they attempted to place § 87(2)(b) under arrest, he retreated inside his apartment with the door open. SGT Negron stated that § 87(2)(b) did not have the authority to refuse her or the other officers’ entry.

PO Johnson’s (BR3) and PO Avenoso’s (BR5) CCRB statements were mostly similar to SGT Negron’s statement for this part of the incident. PO Johnson stated that SGT Negron and the officers made a decision to place § 87(2)(b) under arrest, after determining that he had violated § 87(2)(b) order of protection by shutting off her utilities and by playing loud music. Both officers stated that SGT Negron and PO Johnson stood in front of them and knocked on § 87(2)(b) door, while PO Avenoso and the other officers were behind them. When § 87(2)(b) opened the door, he remained behind the door. SGT Negron told him that he was under arrest for violating § 87(2)(b) order of protection. PO Johnson instructed § 87(2)(b) to place his hand behind his back and he refused. PO Avenoso stated that when SGT Negron attempted to grab § 87(2)(b)

§ 87(2)(b) arm at the door, he pulled it away and walked inside his apartment, and into the living room. SGT Negrón followed § 87(2)(b) through the front door and PO Johnson, PO Avenoso and the other officers followed SGT Negrón inside. PO Johnson and PO Avenoso stated that officers did not ask § 87(2)(b) for permission prior to their entry.

According to PO Johnson's BWC video (**BR11**), at timestamp 1:23, he stands at § 87(2)(b) front door with SGT Negrón. PO Johnson knocks on the door. § 87(2)(b) opens and stands behind the door and tells PO Johnson and SGT Negrón that he wanted § 87(2)(b) arrested. At timestamp 1:55, SGT Negrón tells § 87(2)(b) "Alright, I understand what you are saying. You're right, we have to go by the book. So do me a favor, you're gonna have to turn around." § 87(2)(b) takes a step back inside, and says, "No, no, no, no. Why?" SGT Negrón steps inside § 87(2)(b) doorway and into the living room. PO Johnson follows SGT Negrón and tells § 87(2)(b) "Let me explain." § 87(2)(b) interrupts PO Johnson and tells him that he wants to show him a video that shows that he did nothing wrong. At timestamp 2:15, § 87(2)(b) asks PO Johnson, "Why am I being arrested?" PO Johnson tells § 87(2)(b) "You violated an order of protection that she has against you ... for harassment." At timestamp 2:26, PO Johnson tells § 87(2)(b) that he violated the order of protection by playing loud music and by cutting off § 87(2)(b) utilities.

According to SGT Negrón's BWC video (**BR12**), at timestamp 1:31, SGT Negrón knocks on § 87(2)(b) front door. At timestamp 2:00, SGT Negrón instructs § 87(2)(b) to turn around and he refuses. SGT Negrón and the officers step inside § 87(2)(b) front doorway and into the living room. At timestamp 2:18, the officers inform § 87(2)(b) that he violated § 87(2)(b) order of protection against him by playing loud music and cutting off § 87(2)(b) utilities.

In People v Garvin, 30 N.Y.3d 174, 177 (2017) (**BR20**), the court ruled that a warrantless arrest of a suspect in the threshold of a residence is permissible under the Fourth Amendment, provided that the suspect has voluntarily answered the door and exited their residence and the police have not crossed the threshold to enter the residence. Citing Payton v New York, 445 US 573 (1980), it states that, absent exigent circumstances or consent, such an entry cannot reasonably be made without a warrant.

It is undisputed that § 87(2)(b) voluntarily opened his apartment door and stood within the confines of his apartment when SGT Negrón knocked on it. After a brief conversation regarding § 87(2)(b) order of protection against § 87(2)(b) SGT Negrón walked through the door, and therefore crossed the threshold into his apartment to place him under arrest for allegedly violating an order of protection. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (B) Force: Police Officer Eric Johnson used physical force against § 87(2)(b)**

**Allegation (C) Force: Police Officer Mario Avenoso used physical force against § 87(2)(b)**

**Allegation (D) Force: Police Officer Hasan Javaid used physical force against § 87(2)(b)**

**Allegation (E) Force: Police Officer John Stillman used physical force against § 87(2)(b)**

**Allegation (F) Force: Police Officer Gregory Carosella used physical force against**

**§ 87(2)(b)**

§ 87(2)(b) stated (**BR1 and BR2**) that after the officers entered his apartment, PO Johnson instructed him to turn around and to be placed in handcuffs. § 87(2)(b) refused, and PO Johnson told him that he had violated § 87(2)(b) order of protection against him by playing music loudly. § 87(2)(b) held his cellphone in his hand and told the officers to watch videos he had of § 87(2)(b) harassing him. PO Johnson instructed § 87(2)(b) to turn around again, and he refused. PO Avenoso grabbed § 87(2)(b) cellphone and then the other officers on scene attempted to put his arms behind his back. § 87(2)(b) tensed his body and refused to let the officers grab his arms. § 87(2)(b) felt multiple hands grab his back of his torso and then a single push from behind one of his shoulders. § 87(2)(b) fell to the floor and lay on his stomach. The officers continued to grab at § 87(2)(b) shoulder. They then placed him in handcuffs.

PO Johnson's (**BR3**) and PO Avenoso's (**BR5**) CCRB statements were mostly similar for this part of the incident. Both officers stated that immediately after the officers' entry, PO Johnson went to grab § 87(2)(b) left arm, while PO Avenoso grabbed his right arm in an attempt to place § 87(2)(b) in handcuffs. PO Johnson stated that he told § 87(2)(b) that he was under arrest and then he instructed him to put his hands behind his back multiple times. § 87(2)(b) did not comply and flailed his arms upwards and then bladed his body. Both officers stated that PO Javaid, PO Carasella, and PO Stillman attempted to restrain § 87(2)(b) arms; however, he did not recall where they grabbed them. PO Avenoso stated that § 87(2)(b) twisted his body, and moved his arms side to side and up and down to shake the officers grip off of him. In addition, PO Johnson stated that § 87(2)(b) continuously tensed his body to avoid being grabbed. PO Johnson stated § 87(2)(b) fell onto one of the couches in the living room and pinned PO Javaid under him on the couch.

SGT Negron's CCRB statement (**BR4**) was mostly similar to PO Johnson's and PO Avenoso's statement. SGT Negron stated she stood behind the officers when they entered the apartment because she was unable to grab § 87(2)(b) arms.

According to the TRI Report # § 87(2)(b) (**BR19**), prepared by CPT Galletta, PO Javaid, PO Avenoso, SGT Negron, attempted to grapple and wrestle with § 87(2)(b) to overcome his active resistance.

According to PO Johnson's BWC video (**BR11**), at timestamp 2:36, PO Johnson attempts to grab § 87(2)(b) left elbow while PO Avenoso attempts to grab § 87(2)(b) right wrist. PO Avenoso holds handcuffs in his hand. § 87(2)(b) turns his body away from the officers and pulls his arms away from their grip. At this point, all of the officers are inside the apartment and in the living room area. At timestamp 2:42, § 87(2)(b) tucks his arms to his chest and turns to the couch next to the wall. PO Johnson grabs § 87(2)(b) right arm while PO Avenoso attempts to wrap his arms around § 87(2)(b) torso. § 87(2)(b) tenses his body. PO Johnson instructs § 87(2)(b) to "Put his hands behind his back." § 87(2)(b) squares his stance and pulls away from the officers' grip. § 87(2)(b) tells the officers, "I have video...I'm not putting my hand [behind my back]." At timestamp 2:50, § 87(2)(b) continues to tell officers that he has video, and resist them by tensing his body, shifting his weight, and tucking his arms at his groin. PO Javaid stands on the couch and attempts to grab onto § 87(2)(b) torso. At timestamp 2:59, § 87(2)(b) falls on top of PO Javaid, who was on the couch.

According to PO Javaid's BWC video (**BR14**), which captures the same footage as PO Johnson's BWC from a different angle, at timestamp 2:52, after § 87(2)(b) tells officers, "I have video...I'm not putting my hand [behind my back]." PO Javaid attempts to grab § 87(2)(b) left arm and torso while he stands on the couch. PO Avenoso attempts to grab § 87(2)(b)

torso from the back. At timestamp 2:59, § 87(2)(b) falls on top of PO Javaid. § 87(2)(b) repeatedly tells officers, "I have video." PO Stillman and PO Carasella stands behind § 87(2)(b) grabs his arms. § 87(2)(b) continues to tense his body. At timestamp 3:16, § 87(2)(b) gets off of PO Javaid.

Based on the BWC footage, the investigation determined that none of the officers pushed § 87(2)(b) to the floor while handcuffing him. While § 87(2)(b) did fall, the footage shows that he lost his balance. He was not deliberately forced down. The officers are not seen using any force at this point in the incident beyond grabbing and pulling on his limbs.

According to **NYPD Patrol Guide Procedure 221-01 (BR9)**, officers are allowed to use force "to stabilize a situation and reduce the immediacy of the threat so that more time, options, and/or resources become available. The goal is to gain the voluntary compliance of the subject, when appropriate and consistent with personal safety, to reduce or eliminate the necessity to use force." Further, "In determining whether the use of force is reasonable, members of the service should consider the following: a. The nature and severity of the crime/circumstances b. Actions taken by the subject c. Duration of the action d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders e. Whether the subject is actively resisting custody f. Whether the subject is attempting to evade arrest by flight g. Number of subjects in comparison to the number of MOS h. Size, age, and condition of the subject in comparison to the MOS i. Subject's violent history, if known j. Presence of hostile crowd or agitators k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence."

It is undisputed that § 87(2)(b) was uncooperative and physically resisted officers by tensing his body and holding his arms to his chest when they attempted to take his arms behind his back and apply handcuffs and to arrest him. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (G) Force: Police Officer Eric Johnson used a non-lethal restraining device on**

§ 87(2)(b)

§ 87(2)(b) stated (BR1 and BR2) that while he was on the floor, the officers continued to grab him. § 87(2)(b) experienced difficulty breathing and told the officers, "No, I need to breathe." An officer pulled the hood of § 87(2)(b) sweatshirt over his face. § 87(2)(b) told the officers again that he could not breathe. § 87(2)(b) lay on the floor on his side with both of his arms rested at his side. At this time, § 87(2)(b) felt an electrical shock, first in the middle right portion of his back, and then radiating to the rest of his body for approximately three to four seconds. § 87(2)(b) did not hear any warnings or instructions from officers prior to feeling the electrical shock. § 87(2)(b) reached the back of his body with hand and found that Taser prongs were attached to his sweatshirt. He pulled the prongs out. PO Avenoso placed one cuff on § 87(2)(b) right hand, while PO Javaid and PO Carosella placed another cuff from a second pair of handcuffs on his left hand. The officers then connected the two handcuffs. § 87(2)(b) then felt another electrical shock on his lower back.

PO Johnson stated (BR3) that after § 87(2)(b) fell down, PO Johnson took a step back from the

couch, and issued a warning to § 87(2)(b) that he would deploy his Taser at him if he did not put his hands behind his back. All of the other officers attempted to grab § 87(2)(b) arms and hold him still at this time. PO Johnson could not see what § 87(2)(b) was doing at this time because his view of him was obstructed by the other officers. When PO Johnson had a clear view of the area below § 87(2)(b) breast, he issued a warning and then fired his Taser's darts at § 87(2)(b). PO Johnson aimed at the specific area of § 87(2)(b) body below the chest in accordance with his training as a police officer. PO Johnson had a clear shot and the prongs connected to § 87(2)(b) skin. PO Johnson pressed the trigger once for a five second electrical charge, or one cycle. PO Johnson did not think he deployed additional Taser cycles at this time. The other officers continued to try to grab § 87(2)(b) back and to hold him still, but § 87(2)(b) continued moving his arms. PO Johnson stated that at this time, § 87(2)(b) appeared to be agitated and looked as if he was about to "swing at" officers. PO Johnson deployed his Taser in dart mode at § 87(2)(b) back for another cycle. At this time, the officers successfully took § 87(2)(b) from the couch to the floor and onto his stomach. The officers were then able to move § 87(2)(b) arms behind his back.

SGT Negron stated (**BR4**) that she attempted to grab § 87(2)(b) hands when he fell onto the couch; however, she was unable to do so due to his large size. § 87(2)(b) resisted the officers' attempt to control his arms by continuously flailing his arms and holding his body tense. At this time, PO Johnson announced he had his Taser out, and then used it on § 87(2)(b) next to the couch in the living room. SGT Negron did not recall where the Taser's prongs connected to on § 87(2)(b) body. The Taser did not appear to affect § 87(2)(b) and appeared to make him angrier and more animated. SGT Negron did not recall whether any officers used a Taser against § 87(2)(b) again afterwards.

PO Avenoso's statement (**BR5**) for this part of the incident was mostly similar to SGT Negron's statement.

According to the TRI Report # § 87(2)(b) (**BR19**), prepared by CPT Galletta, officers on scene attempted to place § 87(2)(b) under arrest for violating an order of protection. The officers verbally pleaded with § 87(2)(b) to turn around several times and he refused. § 87(2)(b) tensed up and refused to put his hands behind his back. § 87(2)(b) wrestled with the officers and fell on top of PO Javaid. PO Johnson unholstered his Taser and warned § 87(2)(b) several times to stop resisting or he would be Tased. § 87(2)(b) continued to resist, and PO Johnson deployed his Taser. The Taser was ineffective, and § 87(2)(b) continued to resist. PO Johnson reloaded his Taser and deployed it again. § 87(2)(b) was removed to § 87(2)(b) Hospital where medical staff removed the Taser darts. The photographs attached to the report shows two sets of dart marks on § 87(2)(b) lower back.

According to § 87(2)(b) medical records (**BR15**) from § 87(2)(b) Hospital, hospital staff removed four Taser darts from § 87(2)(b) back. § 87(2)(b) complained of chest pain to the left side of his chest and shortness of breath.

According to PO Johnson's BWC video (**BR11**), at timestamp 3:12, § 87(2)(b) is on top of PO Javaid on the couch. PO Avenoso holds § 87(2)(b) right side, PO Javaid holds § 87(2)(b) from the front, while PO Stillman and PO Carasella stand behind him. PO Johnson tells § 87(2)(b) "You're gonna get Tased, Saied," twice. At timestamp 3:15, § 87(2)(b) gets up from the couch and PO Johnson fires his Taser at the exposed skin of § 87(2)(b) lower back. The darts connected to § 87(2)(b) skin. The Taser cycles for five seconds. At timestamp 5:19am, § 87(2)(b) falls to the couch. PO Johnson shouts, "Put your hands behind your back!" PO Avenoso attempts to grab § 87(2)(b) hand and place to apply handcuffs. § 87(2)(b)



pushes PO Avenoso's hand away. SGT Negron, PO Avenoso, PO Javadi, PO Stillman, PO Carasella attempt to hold § 87(2)(b) still. At timestamp 3:25, PO Johnson cycles his Taser for the second time. § 87(2)(b) is kneeling on the couch and officers attempt to pull his arms backwards. The officers are unsuccessful. At timestamp 3:30, PO Johnson cycles his Taser for the third time. At timestamp 3:36, § 87(2)(b) turns away from the couch and then the officers guide him to the floor by holding his arms. § 87(2)(b) kneels on both knees and appears to be still. PO Johnson yells, "Put your hands behind your back!" At timestamp 3:41, PO Johnson cycles his Taser for the fourth time and removed the darts from the Taser. At timestamp 3:50, PO Johnson affixes another cartridge to his Taser and yells, "You're gonna get Tased again," twice. PO Johnson gets on top of the couch and aims his Taser at the exposed skin on § 87(2)(b) lower back. § 87(2)(b) continues to kneel with his face down. An officer holds § 87(2)(b) left hand. § 87(2)(b) lies on the floor with his right hand positioned forward. There is one cuff on § 87(2)(b) right hand. At timestamp 4:00, PO Johnson tells § 87(2)(b) "You're gonna get Tased again, Saied. Put your hands behind your back! Put your hand behind your back!" § 87(2)(b) replies, "I can't move!" PO Johnson continues, "Put your hands behind your back!" § 87(2)(b) screams, "I can't breathe!" § 87(2)(b) voice is muffled. At timestamp 4:08, PO Johnson fires his Taser at the exposed skin on § 87(2)(b) lower back. The video does not capture whether the darts hooked onto § 87(2)(b) body. § 87(2)(b) lies on the floor and officers connect two sets of handcuffs to restrain him due to his large frame.

According to **NYPD Patrol Guide Procedure 221-08 (BR21)**, a Conducted Electric Weapon (CEW) or Taser should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present. It will often reduce the potential for injuries to members of service and suspects that may result from physical restraint and should be regarded as a possible alternative to such force and restraint, where practical. It is prohibited to use a CEW in situations that do not require the use of physical force. Officers are directed to issue verbal warnings before firing the Taser when possible. The Patrol Guide defines active resistance as physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody. The Patrol Guide further recommends that the point of aim to be lower center mass for frontal discharges (below the chest) and below the neck area for discharges at a suspect's back, avoid discharging at an individual's head, neck, and chest, if possible. When practical, discharge the CEW at the subject's back.

PO Johnson did not take into consideration the nature and severity of the crime § 87(2)(b) was accused of, which was nonviolent. Although, § 87(2)(b) was a large stature male, the officers present outnumbered him six to one. Although § 87(2)(b) initially resisted arrest, § 87(2)(b)

§ 87(2)(g) PO Johnson testified that he deployed his Taser because § 87(2)(b) was actively resisting. BWC shows that PO Johnson fired one Taser cartridge into § 87(2)(b) lower back, cycled it four times, fired a second Taser cartridge into § 87(2)(b) lower back, and then gave one additional cycle.

The BWC video shows PO Johnson giving § 87(2)(b) a warning and then deploying his Taser almost simultaneously. PO Johnson's warning did not give § 87(2)(b) adequate time to react to his warning and therefore also putting other officers' safety in danger due to their close proximity with § 87(2)(b). While § 87(2)(b) was offering resistance when PO Johnson used his first cartridge, when PO Johnson deployed his second cartridge, § 87(2)(b) had already laid on the floor and had complained of difficulty breathing moments prior. § 87(2)(g)



**Allegation (H) Force: Police Officer Mario Avenoso used a chokehold against** § 87(2)(b)

**Allegation (I) Police Officer Mario Avenoso restricted** § 87(2)(b) **breathing.**

§ 87(2)(b) stated that after officers connected the cuffs on both of § 87(2)(b) hands. § 87(2)(b) felt a downward pressure on his back for approximately one minute as if someone had placed a knee on his back. When the sensation went away, § 87(2)(b) lay sideways on the floor and breathed heavily with his face down. An officer moved § 87(2)(b) hood over his face. § 87(2)(b) could not move his body. § 87(2)(b) told the officers that he could not breathe and that he was experiencing difficulty speaking. The officers ignored him. § 87(2)(b) picked himself up and sat upright to breathe.

PO Avenoso stated (BR5) that after PO Johnson announced out loud that he would deploy his Taser at § 87(2)(b) he stopped grabbing § 87(2)(b) arm. After § 87(2)(b) was Tased, PO Avenoso attempted to grab § 87(2)(b) arms again. At that time, § 87(2)(b) appeared to lunge his body towards PO Avenoso. PO Avenoso backpadded to avoid being potentially headbutted by § 87(2)(b). PO Avenoso wrapped his right arm around § 87(2)(b) back and held it at § 87(2)(b) shoulder blade while he also held one of § 87(2)(b) arms with his left hand. PO Avenoso stated that he did this so § 87(2)(b) would not be able to strike him with his head. § 87(2)(b) continued to square and tense his body and push back at officers attempting to place him in handcuffs. PO Avenoso did not recall if he applied downward pressure on § 87(2)(b) back at this time but noted that he did try to restrain him at this time. PO Avenoso stated that he had one knee on the floor and used his other foot planted to not lose balance. § 87(2)(b) continued to tense the arm that PO Avenoso held and attempted to “attack” officers with his shoulders. PO Avenoso stated, that he did not make physical contact with § 87(2)(b) neck while holding § 87(2)(b) in this position. PO Avenoso noted that § 87(2)(b) complained of difficulty breathing; however, he did not know why he said it, nor did he appear to be in respiratory distress.

PO Johnson stated (BR3) that officers placed § 87(2)(b) in handcuffs after he deployed his Taser for the second time. PO Johnson noted that while watching his own BWC during the CCRB interview, he heard § 87(2)(b) complain of having difficulty breathing while he laid on the floor and that he did not independently recall hearing § 87(2)(b) say that at the time of the incident. PO Johnson did not recall seeing § 87(2)(b) in respiratory distress nor observe any officer making physical contact with § 87(2)(b) neck. PO Johnson stated that § 87(2)(b) was transported to the hospital after his arrest because he had been Tased.

SGT Negron stated (BR4) that she did not recall whether § 87(2)(b) complained of having difficulty breathing at any time during the incident. SGT Negron denied seeing any officer pull on § 87(2)(b) sweater or using it to cover his head at any point. SGT Negron noted that as soon as § 87(2)(b) was placed in handcuffs, an ambulance was called, and he was transported to the hospital due to the use of the Taser on him.

According to the TRI Report # § 87(2)(b) (BR19), prepared by CPT Galletta, PO Javaid, PO Avenoso, SGT Negron, attempted to grapple and wrestle with § 87(2)(b) to overcome his active resistance.

According to PO Javaid’s BWC video (BR14), after PO Johnson cycles his Taser four times, at

timestamp 3:31, PO Avenoso wraps his right arm over the back of § 87(2)(b) neck and pushes his head downwards. The camera does not show the front of § 87(2)(b) torso, so it is unclear where PO Avenoso puts his right hand. At timestamp 3:42, PO Avenoso takes § 87(2)(b) to the floor with his back side up. PO Avenoso's hands appear to be in front of § 87(2)(b) upper torso. The footage does not clearly show what part of § 87(2)(b) torso he touches. § 87(2)(b) lies still at this time. At timestamp 3:46, PO Johnson fires the second Taser cartridge. At timestamp 3:40am, officers lock one set of cuffs on § 87(2)(b) left hand. § 87(2)(b) refused to place his right arm behind his back. At timestamp 4:06, PO Avenoso rests his right forearm on § 87(2)(b) upper back below the neckline. PO Avenoso's left arm goes under § 87(2)(b) right shoulder. The video does not capture what PO Avenoso did with his left hand at the time. At timestamp 4:08, § 87(2)(b) yells, "I can't move! I can't breathe!" PO Johnson reloads his Taser off screen. At timestamp 4:09 PO Johnson cycles his Taser for the fifth time. § 87(2)(b) is not seen trying to headbutt PO Avenoso at any point.

According to PO Carosella's BWC video (BR13), at timestamp 1:11 which captures footage after officers connected § 87(2)(b) handcuffs, § 87(2)(b) lies on his side on the floor. PO Avenoso places his left knee on the side of § 87(2)(b) neck for approximately six seconds. § 87(2)(b) lowers his head as if to evade PO Avenoso's knee.

According to NYPD Patrol Guide Procedure 221-01 (BR9), a chokehold includes, but is not limited to, any pressure to the throat, carotid artery, or windpipe, which may prevent or hinder breathing, or reduce intake of air or blood flow. Such action is prohibited.

Based on the BWC footage, the investigation credits the officers' statements that they had difficulty in restraining him. The investigation does not credit § 87(2)(b) statement that an officer pulled his hood over his head before he was Tased, nor does the investigation credit PO Avenoso's statement that § 87(2)(b) attempted to headbutt him after he was Tased. The footage shows § 87(2)(b) lifting his head when PO Avenoso attempted to grab the back of his neck. Although PO Avenoso stated that he used his right arm and wrapped his arm around over § 87(2)(b) back and held his shoulder blade, the video shows PO Avenoso applying downward pressure onto the back of § 87(2)(b) neck and then resting one forearm on § 87(2)(b) back while he laid on the floor, and then complained of difficulty breathing. While PO Avenoso's contact with § 87(2)(b) at the time he had his arm swung over his shoulder is ambiguous because the BWC video footage does not capture the officer's hand, the moment PO Avenoso presses his knee against § 87(2)(b) neck, the action constituted a chokehold. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### Civilian and Officer CCRB Histories

- § 87(2)(b)
- SGT Negrón has been a member of service for fifteen years and has been the subject in two CCRB complaints and one other allegation, which was not substantiated. § 87(2)(g)

- PO Johnson has been a member of service for nine years and has been a subject in seven CCRB complaints and ten other allegations, of which three were substantiated.:
  - 201907200 involved substantiated allegations of discourteous word and offensive language against PO Johnson. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A. § 87(2)(g)
- PO Avenoso has been a member-of-service for nine years and this is the first CCRB complaint to which he has been the subject.

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **RPBP History**

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad No.: 15

Investigator:	Jeffrey Tsui	INV Jeffrey Tsui	03/08/2024
	Signature	Print Title & Name	Date
Squad Leader:	Owen Godshall	SI Owen Godshall	03/08/2024
	Signature	Print Title & Name	Date
Reviewer:			
	Signature	Print Title & Name	Date